



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

December 1, 2016

BY ECF

The Honorable P. Kevin Castel
United States District Judge
Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street, Chambers 1020
New York, New York 10007

**Re: United States v. Walters,
S1 16 Cr. 338 (PKC)**

Dear Judge Castel:

We respectfully write in advance of the evidentiary hearing scheduled for December 12, 2016,¹ to supply the Court with travel records demonstrating that the Federal Bureau of Investigation ("FBI") agents involved in this case did not make travel plans to approach two targets until five days *after* the Government's May 23, 2014 wiretap reauthorization application.

¹ On November 17, 2016, the Court ordered an evidentiary hearing on two issues:

1. The timing of the decision to have special agents approach two targets on May 29, 2014, including when travel arrangements were made for the approaches.
2. During the period April 1, 2014 to June 30, 2014, any communication, directly or indirectly, between any Special Agent of the FBI or Assistant United States Attorney who had participated or was participating in the investigation of the subject matter that led to the indictment returned in this case and any of the following: Michael Rothfeld, Susan Pulliam, Ben Protes, Matthew Goldstein or any employee of the *Wall Street Journal* or *The New York Times*.

(Order at 2.)

These records corroborate that only after learning on May 27, 2014 of the immediacy of an impending news story—which would publicly disclose and potentially seriously compromise the Government’s investigation—did the Government quickly pivot and decide to approach the subjects of the investigation before that publication occurred, so as to best protect its investigation under difficult circumstances. (Kasulis Decl. ¶ 14.) As the attached records show, the agents booked their requests for travel on May 28, 2014. (Ex. A at 1-3; Ex. B at 1-3; Ex. C at 1; Ex. D at 1.)² They then flew to Ohio and Texas on May 29, 2014 and approached the two targets that day. (Kasulis Decl. ¶ 14.) Stories about the Government’s investigation were ultimately published on May 30, 2014. (*Id.*) There was no decision or plan in place prior to May 27 for agents to approach the targets. (*Id.* ¶ 13.) The travel records also demonstrate that the Government’s May 23 statement to the Court—that, as of that date, “agents were not currently planning to approach” the targets (*id.*)—was entirely accurate.

We respectfully submit that these travel records, together with the Government’s representations in its earlier submission to the Court, address the timing question raised in the first issue of the Court’s November 17 Order, and obviate the need for a hearing on that issue. *See, e.g., United States v. Watson*, 404 F.3d 163, 167 (2d Cir. 2005) (“[A]n evidentiary hearing on a motion to suppress ordinarily is required if the moving papers are sufficiently definite, specific, detailed, and nonconjectural to enable the court to conclude that contested issues of fact going to the validity of the search are in question.” (internal quotation marks omitted)).

Respectfully submitted,

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Cc: Barry H. Berke, Esq.

² Exhibits A and B are the Travel Summaries for the FBI agents who conducted the interviews, Special Agents Michael Howard and Gavin Shea. Those Travel Summaries show a “Request Date” of May 28, 2014. (*E.g.*, Ex. A at 1 (Howard Travel Summary); Ex. B at 1 (Shea Travel Summary).) That date appears in the upper-left-hand corner of each page of the Travel Summaries. In addition, the agents’ itineraries, attached as Exhibits C and D, are dated May 28, 2014. (Ex. C at 1 (Howard itinerary); Ex. D at 1 (Shea itinerary).)